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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,933	08/20/2001	Tom Sander	TB-1041A-US	1292

7590 07/15/2005

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EXAMINER

SNOW, BRUCE EDWARD

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 07/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/701,933

Applicant(s)

SANDER ET AL.

Examiner

Bruce E. Snow

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 59-61, 65, 66, 69-71 and 81-105 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 59-61, 65, 66, 69 and 81-105 is/are allowed.
- 6) ☒ Claim(s) 70 and 71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/29/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Response to Arguments

Applicant's response filed May 05, 2005 has been fully considered. Applicant's arguments and claimed dimensions overcame the rejections under 35 U.S.C. 102(e) as being anticipated by Stroeve et al (5,728,159) and Pafford et al. The figures, such as figure 25 of Pafford et al, could not be used for teaching dimensions. Claims 70-71 remain rejected as being anticipated by Pafford, the Examiner's position is clearly stated in the grounds of rejection.

Applicant's arguments and amendments regarding the rejected under 35 U.S.C. 102(e) as anticipated by Pafford et al (6,371,988) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Pafford et al (6,371,988) in view of Kuntz (4,349,921) were persuasive.

Applicant's arguments and amendments regarding the rejected under 35 U.S.C. 102(e) as anticipated by Coates et al (5,989,289) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Coates et al (5,989,289) in view of Kuntz (4,349,921) were persuasive.

Allowable Subject Matter

Claims 59-61, 65-66, 69-71, 81-105 are allowed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 70-71 are rejected under 35 U.S.C. 102(e) as being **anticipated** by Pafford (6,371,988).

Referring to all figures specifically figures 25, Pafford teaches a bone implant comprising a substantially planar upper and lower surfaces, an anterior end and a posterior end, a first side wall and second side wall opposite said first side wall, wherein the first and second side walls extend between the planar surfaces, and wherein the second side wall comprises a concave surface (top side in figure 25) and the first wall (bottom side in figure 25) comprises a convex surface. The anterior end is on the left side and the posterior end is on the right side.


Referring to figure 25, clearly the implant is elongate in one direction.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce E Snow whose telephone number is (571) 272-4759. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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BRUCE SNOW
PRIMARY EXAMINER